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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888
270 7590 01/24/2007 HOWSON AND HOWSON SUITE 210 501 OFFICE CENTER DRIVE FT WASHINGTON, PA 19034			EXAMINER PATTERSON, MARC A	
			ART UNIT	PAPER NUMBER
			1772	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/24/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/381,385	ASHMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marc A. Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5-6,12,15,-21 and 23-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-6,12,15,-21 and 23-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617) and Gibbons et al (U.S. Patent No. 4,888,222), of record on page 2 of the previous Action, is withdrawn.

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudert et al (U.S. Patent No. 5,523,045) in view of Fukui et al (Japanese Patent No. 03041135) and Branch (U.K. Patent No. 2295617).

With regard to Claims 1, 6, 15, 24 – 29, 32, 34 – 36, 38 and 40, Kudert et al disclose a method for storing a flavored good (food; column 1, lines 25 – 26) comprising the step of providing a laminated material having a core barrier layer sandwiched between an outer layer and at least one further layer (column 27, lines 62 – 67; column 28, lines 1 – 12), the further layer being formed from a non – polar thermoplastic resin (polypropylene; column 29, line 55) filled with an inorganic filler comprising talc (column 30, lines 14 – 15); the core layer

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comprising ethylene vinyl alcohol is a barrier layer having a thickness of less than 25 microns (column 30, lines 52 – 62) and storing a flavored good in a container formed from the laminate material (food; column 1, lines 25 – 26); the further layer therefore extending between the flavored good and the core barrier layer; Kudert et al therefore also disclose a laminate material having the laminate layer structure and a container formed from the laminate; Kudert et al do not disclose a platelet – filled barrier layer, and therefore disclose a non – platelet filled barrier layer; Kudert et al does not disclose components other than resin for the barrier layer and polyolefin and talc for the further layer and therefore discloses a further layer consisting of a non – polar resin and talc and a barrier layer consisting essentially of resin; with regard to the claimed aspect of the container reducing absorption of flavoring, Kudert et al do not disclose absorption of flavoring, and therefore discloses reduced absorption of flavoring; because the laminate is made into a container the layer also container provides a stiffness which allows the laminate to have a relatively thin thickness. However, the claimed aspects of the talc filled layer reducing absorption and providing stiffness are directed to intended use of the layer, which are given little patentable weight. Kudert et al fail to disclose 5% talc by weight and talc which is a high purity talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio from 16 to 30.

Fukui et al teach a container comprising 5% talc for the purpose of obtaining a container for the containment of food (English Abstract – Constitution). One of ordinary skill in the art would therefore have recognized the advantage of providing for the amount of talc of Fukui et al in Kudert et al, which comprises a container, depending on the desired containment of food of the end product.

Branch teaches the use of a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 (page 5, second paragraph; page 6, third paragraph; Abstract) for the purpose of obtaining a container which provides a good oxygen barrier (page 3, third paragraph) and a talc which is a high purity talc (purer grades of talc, therefore talc of high purity, is preferred; page 5, third paragraph) for the purpose of obtaining talc which has a high degree of whiteness without using a pigment (page 5, third paragraph). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the high purity talc having a CIE whiteness of at least 40, and an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 of Branch in Kudert et al, which is a container having an oxygen barrier, depending on the desired oxygen barrier and whiteness of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a talc having a CIE whiteness index of at least 40, which includes 45, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Kudert et al in order to obtain a container which provides a good oxygen barrier and whiteness without the use of a pigment as taught by Branch and talc in the amount of 5% by weight in Kudert et al for the purpose of obtaining a container for the containment of food as taught by Fukui et al.

With regard to Claims 5, 12, 17 and 23, the further layer disclosed by Kudert et al is spaced from the inner, and therefore internal, surface of the laminated material by an additional layer of non – polar thermoplastic material filled by a platelet filler (column 28, line 5).

With regard to Claim 16, the further layer disclosed by Kudert et al is adjacent the barrier layer and is adhered thereto by a tie layer (column 28, lines 6 – 8).

With regard to Claims 18 – 19, 30 – 31 and 33, the thickness of the further layer disclosed by Kudert et al is 50 microns (column 28, line 31).

With regard to Claims 20 – 21, 37 and 39, Kasai discloses the blending of polypropylene with a polyethylenes or other polyolefins to obtain a layer, therefore is heat sealable (column 29, lines 50 – 60) and therefore discloses a further layer comprising high density polyethylene and linear medium density polyethylene.

#### ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617) and Gibbons et al (U.S. Patent No. 4,888,222), of record in the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new rejections above are directed to Claims 1, 5 – 6, 12, 15 – 21, 23 – 28, 30 – 33, 35, 37 and 39.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 1/22/07*  
Marc A. Patterson, PhD.  
Primary Examiner  
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